

***State v. Martin*, 2018 WL 3032406 (App. Div. 1 June 19, 2018)**

Martin shot and killed one of his neighbors when the neighbor decided to approach Martin's house to ask why he kept putting railroad ties in the dirt road they shared. Martin admitted to shooting the victim; at trial, he testified that he did so because the victim ignored his demands to get off his property and he believed the victim was armed and was coming to harm him. When Martin was first tried for first-degree murder, the jury, after marking on the verdict form it was "unable to agree" on first-degree murder, convicted him of the lesser-included offense of second-degree murder. Following a successful appeal, Martin was retried and convicted of first-degree murder. On appeal, he argued double jeopardy barred his second trial for first-degree murder because the first jury's inability to agree on first-degree murder constituted an implied acquittal. Division 1 affirmed the conviction.

- When the jury convicts on a lesser offense after formally stating on the verdict form that it has been unable to unanimously agree on the greater offense, this constitutes the equivalent of the "genuine deadlock" such that retrial is permitted on the greater offense, rather than an implied acquittal barring retrial.

The Court noted that SCOTUS has held that when a jury convicts on a lesser-included offense but is silent on the greater offense, the defendant is considered to have been "impliedly acquitted" on the greater offense, thereby barring retrial. However, SCOTUS has also held that double jeopardy does not bar retrial of charges on which a jury has been unable to agree; when a genuine deadlock exists, a defendant's right to have a particular jury decide his fate becomes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury. Here, the jury was instructed it could consider the lesser charge if "after reasonable efforts you are unable to unanimously agree on the more serious crime," and was given a single verdict form giving it the option of checking "Unable to agree" on the greater charge of first-degree murder. The Court noted that Martin did not object to the instruction, the verdict form, or the clerk's announcement in open court of the jury's verdict of "Unable to agree" on the charge of first-degree murder, and guilty of second-degree murder. Therefore, since the jury formally stated on the verdict form that it was unable to unanimously agree on the greater offense, this constitutes the equivalent of the "genuine deadlock" such that retrial was permitted on the greater offense.

<http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2018/1%20CA-CR%2016-0551%20-%20Martin%20Opinion.pdf>